

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

KEITH FISCHER, MICHAEL O’SULLIVAN,
JOHN MOESER, LOUIS PIA, THOMAS
BARDEN, CONSTANCE MANGAN, and
CHARISE JONES individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

GOVERNMENT EMPLOYEES INSURANCE
COMPANY d/b/a GEICO,

Defendant.

No. 23 Civ. 02848 (SJB) (SLT)

DECLARATION OF MICHAEL J. SCIMONE
IN SUPPORT OF PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

I, Michael J. Scimone, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at Outten & Golden LLP (“O&G”) and one of the primary attorneys responsible for this matter.

2. I make this declaration in support of Plaintiffs’ Motion for Class Certification. I have personal knowledge of the matters set forth herein and would so testify if called as a witness at trial.

Outten & Golden LLP

3. Outten & Golden is a 60+ attorney firm based in New York City, with offices in San Francisco and Washington D.C., that focuses on representing plaintiffs in all types of employment matters, including complex and class action litigation. Outten & Golden is widely recognized as one of the top plaintiff-side employment law firms in the country. In addition to my own experience as a class-action litigator in employment disputes, detailed below, the

attorneys in my firm working on this file also have extensive experience in employment and class action litigation.

4. Courts have widely recognized Outten & Golden as qualified counsel in many types of employment class actions. *See, e.g., Times v. Target Corp.*, No. 18 Civ. 2993, 2018 WL 3238821, at *1 (S.D.N.Y. May 14, 2018) (preliminarily approving Outten & Golden as class counsel for settlement class challenging defendants' background check policies and practices); *Keels v. Geo Group, Inc.*, No. 15 Civ. 6261, 2017 WL 4477000, at *1 (E.D.N.Y. Oct. 1 2017) (appointing Outten & Golden as class counsel when preliminarily approving Fair Credit Reporting Act settlement, which was finally approved on February 23, 2018); *Houser v. Pritzker*, 28 F. Supp. 3d 222, 248, 250 (S.D.N.Y. 2014) (granting class certification as to liability and appointing Outten & Golden as class counsel in nationwide Title VII racial discrimination case); *Calibuso v. Bank of Am. Corp.*, 299 F.R.D. 359, 376 (E.D.N.Y. 2014) (certifying class of female financial advisors and approving settlement of \$39 million and injunctive relief in gender discrimination case); *Duling v. Gristede's Operating Corp.*, No. 06 Civ. 10197, 2013 WL 3146772, at *1 (S.D.N.Y. June 19, 2013) (granting class certification and approving the settlement in a Title VII gender discrimination case); *Easterling v. Connecticut, Dep't of Corr.*, 265 F.R.D. 45 (D. Conn. 2010) (granting class certification in Title VII gender discrimination case); *Scanlan v. Am. Airlines Grp., Inc.*, No. 18 Civ. 4040, 2021 U.S. Dist. LEXIS 194693, at *18 (E.D. Pa. Oct. 8, 2021) (granting class certification in USERRA case involving paid military leave); *Huntsman v. SW. Airlines Co.*, No 17 Civ. 3972 (N.D. Cal. Oct. 4, 2019), ECF No. 57 (appointing Outten & Golden as class counsel in settlement of USERRA case).

5. I am a partner in Outten & Golden's Class Action Practice Group. I regularly represent employees in class and collective actions challenging workplace practices. I joined

Outten & Golden's New York office in 2009 as an Associate. I graduated from the City University of New York School of Law in 2009, where I participated in workers' rights litigation through the Immigrant and Refugee Rights Clinic and was a member of the New York City Law Review. Prior to law school, I worked as an organizer for UNITE HERE, an international union representing garment, laundry, and industrial workers in North America. I earned my B.A. in 2001 from Vassar College.

6. I have worked on multiple employment class action cases, including *Strauch v. Computer Sciences Corp.*, No. 14 Civ. 956, 2018 WL 4539660, at *1 (D. Conn. Sept. 21, 2018), where I was part of the trial team that obtained a jury verdict on behalf of approximately 1,000 computer support workers seeking unpaid overtime. Other representative cases I have litigated include *Perez v. Allstate Ins. Co.*, No. 11 Civ. 1812, 2019 WL 1568398, at *2 (E.D.N.Y. Mar. 29, 2019) (\$3.95 million pre-trial settlement on behalf of no-fault insurance adjusters in overtime misclassification case); *Przytula v. Bed Bath & Beyond, Inc.*, No. 17 Civ. 5124, ECF No. 123 (N.D. Ill. Jan. 29, 2019) (\$8.5 million settlement on behalf of assistant managers); *Jacob v. Duane Reade, Inc.*, No. 11 Civ. 160, 2017 WL 1968383, at *1 (S.D.N.Y. May 5, 2017) (\$13.5 million pre-trial settlement on behalf of assistant managers); *Douglinv. Greatbanc Trust Co., Inc.*, No. 14 Civ. 620 (S.D.N.Y. Apr. 24, 2017), ECF No. 103 (\$4.75 million settlement in ERISA litigation alleging breach of fiduciary duty); and *Murphy v. LenderLive Network, Inc.*, No. 13 Civ. 3135 (D. Colo. Sept. 2, 2015), ECF No. 169 (\$2.4 million pretrial settlement on behalf of mortgage underwriters in overtime misclassification case).

7. I have been selected as a Rising Star by Super Lawyers from 2015 through 2020, as a Super Lawyer since 2021, and as a Lawdragon 500 Leading Plaintiff Employment Lawyer since 2020. I am a member of the Sedona Conference's Working Group 1 and have participated

in drafting Sedona Conference publications on electronic discovery and civil procedure. I am also an active member of the National Employment Lawyers' Association, and co-chair its Department of Labor working group.

8. Two other attorneys at O&G primarily worked on this matter. Sabine Jean is an Associate at Outten & Golden's New York office. She represents employees in class and collective action wage and hour and discrimination cases. Before joining the firm in 2017, Ms. Jean was an extern for the UCLA Title IX Office. She received her B.A. from Smith College in 2011, her M.S.T. from Fordham Graduate School of Education in 2013, and her J.D. from UCLA School of Law in 2017, where she was a Managing Editor on the UCLA Law Review and the National Black Law Journal. She is admitted to the bars of the State of New York, the State of New Jersey, the U.S. District Courts for the Eastern and Southern Districts of New York, and the U.S. Court of Appeals for the First Circuit. She has been selected as a Rising Star by Super Lawyers since 2021 and as a Best Lawyers: Ones to Watch since 2024.

9. Jarron McAllister is an Associate at Outten & Golden LLP, and a member of the firm's Class Action Practice Group. Prior to joining the firm in 2022, Mr. McAllister clerked for the Honorable Robin M. Meriweather on the United States District Court for the District of Columbia. Prior to his clerkship, Mr. McAllister worked as a fellow at the National Center for Law and Economic Justice, where he litigated public benefits class actions and engaged in workers' rights advocacy. Mr. McAllister received his A.B. from Princeton University in 2016 and his J.D. from the University of Pennsylvania Law School in 2020. During law school, Mr. McAllister worked on employment law matters as a law clerk at Berger Montague. He also interned at the ACLU of Michigan, the Public Interest Law Center in Philadelphia, and Community Legal Services of Philadelphia. He was an Articles Editor for the Journal of

Constitutional Law and served as the Managing Advocate for the Employment Advocacy Project, where he represented clients in unemployment compensation administrative hearings and appeals.

Adequacy of Plaintiffs and Plaintiffs' Counsel

10. The named Plaintiffs in this case understand their obligations as class representatives and have committed significant time to this case. From the beginning of this litigation, they have been asked to take concrete steps to fulfill these obligations, and they have done so without hesitation. They understand that their obligations are continuing and have committed to meeting them.

11. Plaintiffs have participated fully in written discovery, including by answering interrogatories, providing documents responsive to Defendant's requests, and attending full-day depositions that, in some instances, required significant travel.

12. Plaintiffs' counsel have extensive experience litigating employment class actions and have previously been appointed class counsel by Courts in this District. *See, e.g., Wood v. Mike Bloomberg 2020, Inc.*, 746 F. Supp. 3d 185, at *21-22 (S.D.N.Y. 2024); *Perez v. Allstate Ins. Co.*, No. 11 Civ. 1812, 2014 U.S. Dist. 130214, at *69 (E.D.N.Y. Sept. 16, 2014); *Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143, 2009 U.S. Dist. LEXIS 114818, at *10 (E.D.N.Y. Dec. 3, 2009).

13. Plaintiffs' counsel have vigorously prosecuted and devoted substantial time to this action to date. Plaintiffs' Counsel successfully argued against GEICO's motion to dismiss, have conducted robust class certification discovery, including Manager and Supervisor depositions and a Rule 30(b)(6) deposition, and defended 15 depositions of Plaintiffs and Opt-In Plaintiffs.

14. Plaintiffs' counsel are prepared to commit the resources necessary to litigate this

matter on behalf of the class going forward.

Exhibits

15. A list of Plaintiffs' exhibits is attached hereto.

* * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: March 12, 2025
Nyack, NY

Respectfully submitted,

/s/ Michael J. Scimone

Michael J. Scimone

OUTTEN & GOLDEN LLP

685 Third Avenue, 25th Floor

New York, NY 10017

Telephone: 212-245-1000

Facsimile: 646-509-2060

mscimone@outtengolden.com

*Attorney for Plaintiffs and the Putative Class and
Collective*

Plaintiffs' Exhibit List ISO Motion for Class Certification

Exhibit No.	Description
1	Opt-In Plaintiff Albert Brust Deposition Transcript Excerpts
2	Opt-In Plaintiff Craig Costanzo Deposition Transcript Excerpts
3	Plaintiff Keith Fischer Deposition Transcript Excerpts
4	Opt-In Plaintiff Margaret Fischer Deposition Transcript Excerpts
5	Opt-In Plaintiff Michael Grey Deposition Transcript Excerpts
6	Plaintiff Charise Jones Deposition Transcript Excerpts
7	Opt-In Plaintiff Daniel King Deposition Transcript Excerpts
8	Plaintiff John Moeser Deposition Transcript Excerpts
9	Opt-In Plaintiff Maria Munoz Deposition Transcript Excerpts
10	Plaintiff Louis Pia Deposition Transcript Excerpts
11	Rule 30(b)(6) Deposition Transcript Excerpts
12	William Newport Deposition Transcript Excerpts
13	Gerard Cassagne Deposition Transcript Excerpts
14	SIU Field Supervisor Expectations 2020 (Bates Stamped G007935 - G007937)
15	Senior Field Security Investigator Job Description (Bates Stamped G006749 - G006750)
16	Lead Security Investigator Job Description (Bates Stamped G006754 - G006755)
17	Internal Major Case SIU Investigator Job Description (Bates Stamped G006756)
18	Senior Internal Security Investigator Job Description (Bates Stamped G007697)
19	Major Case SIU Investigator Job Description (Bates Stamped G007700)
20	Internal Security Investigator Job Description (Bates Stamped G007705)
21	Field Major Case SIU Investigator Job Description (Bates Stamped G007709 - G007710)
22	Claims Security Investigator Job Description (Bates Stamped G007711 - G007712)
23	Plaintiff Constance Mangan Deposition Transcript Excerpts
24	Plaintiff Michael O'Sullivan Deposition Transcript Excerpts
25	Opt-In Plaintiff Michael Reed Deposition Transcript Excerpts
26	Plaintiff Thomas Barden Deposition Transcript Excerpts
27	2017 Special Investigations Unit Operations Manual (Bates Stamped G010748 - G010792)
28	FLSA Communications to Associates (Bates Stamped G009144 - G009145)
29	Hourly Rate Excel (Bates Stamped G009143)
30	May 2023 HR Handbook – Compensation Contents (Bates Stamped G000044 - G000056)
31	November 2017 Associate Handbook – Compensation Contents (Bates Stamped G000028 - G000043)
32	AD & SIU Talking Points (Bates Stamped G010294)

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Exhibit No.	Description
33	Keith Fischer November 30, 2016 email to Gerard Cassagne (Bates Stamped G011492)
34	Al Brust June 3, 2020 email to Gerard Cassagne (Bates Stamped G012079)
35	Louis Caniglia, Jr. December 15, 2016 email to Gerard Cassagne (Bates Stamped G011543)
36	William Newport June 25, 2018 email (Bates Stamped G010847)
37	2018 SIU Reforecast Excel (Bates Stamped G010846)
38	Special Pay Program Acknowledgement (Exempt) Form (Bates Stamped G011552)
39	November 23, 2018 email from Rick Hoagland to William Newport (Bates Stamped G010848 - G010851)
40	Gerard Cassagne November 26, 2018 email to Special Investigators (Bates Stamped G011553)
41	June 2020 Gerard Cassagne Emails to SIU Supervisors and Special Investigators (Bates Stamped G011584 - G011585)
42	November 2017 Associate Handbook – Employment Contents (Bates Stamped G000161 - G000190)
43	July 2023 Associate Handbook – Employment Contents (Bates Stamped G000191 - G000235)
44	Michael Reed 2017 Performance Appraisal (Bates Stamped G006014 - G006018)
45	Scott Brady 2018 Performance Appraisal (Bates Stamped G005991 - G005992)
46	Michael Grey 2019 Performance Appraisal (Bates Stamped G006119 - G006129)
47	George McManus 2020 Performance Appraisal (Bates Stamped G006449 - G006456)
48	Michael Grey January – June 2021 Performance Appraisal (Bates Stamped G006152 - G006154)
49	Maria Munoz July – December 2022 Performance Appraisal (Bates Stamped G006202 - G006203)
50	SIU Case Investigations Instructions (Bates Stamped G017292 - G017300)
51	Craig Costanzo July – December 2021 Performance Appraisal (Bates Stamped G006623 - G006624)
52	SIU Core Metrics Report Card Excel (Bates Stamped G007938)
53	October 20, 2021 email from SIU Supervisor Chester Janik to Special Investigator Michael Grey (Bates Stamped G012429 - G012430)
54	Gerard Cassagne SIU Supervisor 2017 Performance Appraisal (Bates Stamped G010539 - G010542)
55	Gerard Cassagne 2018 Performance Appraisal (Bates Stamped G010601 - G010607)
56	2019 Metrics PowerPoint (Bates Stamped G007960 - G007971)
57	SIU Supervisor Toni D'Agtata Coaching Log for Special Investigator Ted Wendling (Bates Stamped G016093 - G016098)
58	June 2017 – July 2023 Time Records (Bates Stamped G004003)
59	July 2023 – November 2023 Time Records (Bates Stamped G004148)

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Exhibit No.	Description
60	Opt-In Plaintiff Louis Caniglia, Jr. Deposition Transcript Excerpts
61	Overview of SIU Case Investigations (Bates Stamped G011963)
62	Declaration of Catherine O'Neil
63	Declaration of Troy Kessler